Appendix

PART I.

Statutes Involved.

Section 4(a) of the Emergency Price Control Act of 1942 (Public Law 421, 77th Congress) provides as follows:

> "It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2 . . ."

Section 205(b) of the Act provides as follows:

> "Any person who *willfully* violates any provision of section 4 of this Act . . . shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment . . . for not more than one year . . . or to both such fine and imprisonment . . ."

Section 205(d) of the Emergency Price Control Act of 1942 provides:

> "No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything *done or omitted to be done in good faith pursuant to any provision of this Act or any regulation,* order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration. . . . In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action

shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action." (Italics added).

Section 205(f)(2) of the Emergency Price Control Act of 1942 provides:

"Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, *or has violated any of the provisions of any regulation, order, or requirement under section 2* or section 202(b), or any of the provisions of any price schedule effective *in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person.*" (Italics added.)

Regulations Involved.

The following sections of Maximum Rent Regulation No. 28[1] are pertinent to this case:

"1388.1801(c): The provisions of any lease or other rental agreement shall remain in force pursuant to the terms thereof, except insofar as those provisions are inconsistent with this Maximum Rent Regulation."

"1388.1802. Prohibition Against Higher than Maximum Rents. Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for use or occupancy on and after the effective date of this Maximum Rent Regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this Maximum Rent Regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. Lower rents than those provided by this Maximum Rent Regulation may be demanded or received."

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[1] Fed. Reg. 4916.

"1388.1804. Maximum Rents. Maximum rents (unless and until changed by the Administrator as provided in Section 1388.1805) shall be:

(a) For housing accommodations rented on March 1, 1942, the rent for such accommodations on that date.

(b) For housing accommodations not rented on March 1, 1942, but rented at any time during the two months ending on that date, the last rent for such accommodations during that two-month period.

(c) For housing accommodations not rented on March 1, 1942, nor during the two months ending on that date, but rented prior to the effective date of this Maximum Rent Regulation, the first rent for such accommodations after March 1, 1942. The Administrator may order a decrease in the maximum rent as provided in Section 1388.1805(c).

(d) For (1) newly constructed housing accommodations without priority rating first rented after March 1, 1942 and before the effective date of this Maximum Rent Regulation or (2) housing accommodations changed between those dates so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations changed between those dates from unfurnished to fully furnished or from fully furnished to unfurnished, or (4) housing accommodations substantially changed between those dates by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, the first rent for such accommodations after such construction or change;

Provided, however, That, where such first rent was fixed by a lease which was in force at the time of a major capital improvement, the maximum rent shall be the first rent after termination of such lease. The Administrator may order

a decrease in the maximum rent as provided in Section 1388.1805(c)."

"1388.1805(d). If the rent on the date determining the maximum rent, or any other fact necessary to the determination of the maximum rent, is in dispute between the landlord and the tenant, or is in doubt, or is not known, the Administrator on petition of the landlord filed within 30 days after the effective date of this Maximum Rent Regulation, or at any time on his own initiative, may enter an order fixing the maximum rent by determining such fact; or if the Administrator is unable to ascertain such fact he shall enter the order on the basis of the rent which he finds was generally prevailing in the Defense-Rental Area for comparable housing accommodations on March 1, 1942."

"1388.1814. Effective Date of the Regulation: This Maximum Rent Regulation (1388.1801 to 1388.1814, inclusive) shall become effective July 1, 1942."

Interpretations of the Administrator of the Office of Price Administration concerning the foregoing provisions of Maximum Rent Regulation No. 28 applicable to this case are as follows:

INTERPRETATION 5(a)(1)—I.

Elements of Major Capital Improvement

A "major capital improvement" consists of a substantial change in the housing accommodations such as would materially increase the rental value in a normal market where free bargaining prevailed unaffected by a shortage in housing accommodations. It must be different from ordinary repair, replacement and maintenance.

A major capital improvement falls into one of three categories:

(1) A structural addition,

(2) A structural betterment,

(3) A complete rehabilitation.

(1) Structural Addition

A structural addition is a clear addition to the housing accommodations, such as the construction of an additional room or a new porch or the installation of plumbing, heating or electricity where such facilities did not previously exist. *The addition need not necessarily be a part of the structure,* but might also include a new garage or the installation of sidewalks. *If the improvement has resulted in some added feature which did not exist prior to the change of a kind which would normally result in an increase in the rental value, then it would be a substantial change by a major capital improvement.* (Italics added.)

(2) Structural Betterment

A structural betterment is a qualitative improvement, even though such an improvement is in part a replacement. Within this group would be the modernization of an existing bathroom, the installation of a modern heating plant replacing an antiquated system, a change in the interior partitions such as would improve the layout, and all changes of similar character.

(3) Complete Rehabilitation

A complete rehabilitation is a general modernization and reconstruction such as would make the property attractive in a different rental range. Even though the individual items involved would, if considered separately, be normal repair, replacement and maintenance, if, in the aggregate, there is a substantial change in the character of the housing accommodations, there would be grounds for adjustment. The difference between a rehabilitation which is a major capital improvement and ordinary repairs is primarily a question of degree and extent. Only where the rehabilitation is so comprehensive that it could be expected to result in a comparatively high percentage adjustment in rental would it constitute a major capital improvement.

INTERPRETATION 4(D)—1. PROCEDURE WHERE THERE IS DOUBT AS TO WHETHER A MAJOR CAPITAL IMPROVEMENT HAS OCCURRED.

(Formerly No. 9—Issued July 6, 1942)

The Housing Regulation provides, in Section 4(d), that where housing accommodations have been substantially changed after the maximum rent date and before the effective date of the Regulation "by a major capital improvement as distinguished from ordinary repair, replacement and maintenance," the maximum rent is the first rent after such change. Where the question whether there has been a major capital improvement is a close one, the landlord may not wish to take the risks involved in making his own determination of the question. In such a situation there is, within the meaning of Section 5(d), doubt concerning a "fact necessary to the determination of the maximum rent." The Rent Director on his own initiative may determine this fact for purposes of establishing the maximum rent.

The following provisions from Subpart D (Interpretations) of Procedural Regulation No. 3 issued by the Administrator of the Office of Price Administration are also applicable to Maximum Rent Regulation No. 28 and to the facts of this case:

> "1300.241 Interpretations. . . . Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding thereof by regulation, order or amendment, shall constitute action in good faith pursuant to the provision of the act, or of the regulation or order to which such official interpretation relates. An official interpretation shall be applicable only with respect to the particular person to whom, and to the particular factual situation with respect to which, it is given unless issued as an interpretation of general applicability."

"1300.243 Interpretation to be written: Authorized Officials. Official interpretations shall be given only in writing, signed by one of the following officers of the Office of Price Administration: the Administrator, the general counsel, any associate or assistant general counsel, any regional attorney, any regional rent attorney, any chief attorney for a state or district or defense-rental area office, and any district rent attorney: Provided, that interpretations of general applicability shall be given only by the Administrator, the general counsel, or any associate or assistant general counsel."

PART II.

Excerpts From Defendant's Exhibit 2-B.

Commencing at the top of page 24 and continuing through line 18, page 27 of Defendant's Exhibit 2-B, the testimony given by petitioner at a hearing on November 3, 1942, before the Office of Price Administration, is as follows:

Mr. Dunlap. Q. Mr. Taylor, will you tell us what is contained in Sheet No. 1?[2]

A. Sheet No. 1 is a summary taken from the books, showing the rents on the apartments in the house at 530 Larkin Street on January 1, on February 1, March 1, April 1, May 1, June 1, July 1, August 1, September 1, October 1, and November 1.

It also contains a column following the rent on November 1, in which is said figure designated "Fair rent established by tenants' survey in May and June."

The next column has designations "M U C I R," denoting changes made. "M" denotes major capital improvement; "U" denotes the change from furnished to unfurnished; "C" represents complete rehabilitation; "I" denotes increased services; "R" means refurnished by Mrs. Flynn or additional furnishings provided by Evelyn Flynn.

In the last column is a heading, November 1, total all charges, and in this column are contained the figures which represent the consolidated total billed in accordance with our regular terms of tenancy.

Q. Do all of these charges, rent charges, represent the rent actually charged to tenants?

A. To the best of my knowledge, and taken from the books, they do represent the rents actually charged the tenants.

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2 Sheet No. 1 here referred to was introduced at trial of petitioner a Govt's. Ex. No. 1.

Q. In the column headed "Changes Made," the letter "M" appears for all of the rooms. May I understand the significance of "Major Capital Improvements"? Will you describe the major capital improvements?

A. Yes. That represents the installation of laundry equipment which was provided for the use of all the apartments in the building. It necessitated structural changes, and the installation of sewer, hot and cold water, and electric lights, and the installation of an automatic laundry machine and the providing of space in which to install it, and the providing of the space for chairs and lights to light the area where it was installed, all of which was structural changes and additions to the property, and as such are distinguished from ordinary maintenance and repair.

Q. What was the total cost of these changes?

A. Total cost would be my own service and that of my employees, which exceeded $500.00.

Q. What portion was for your own services?

A. About ten per cent.

Q. What portion was for material?

A. Including the cost of the machine?

Q. Yes. Including the cost of the machine, the portion for material was about 60 per cent.

Q. The labor of employees?

A. Outside labor was approximately $65.00, but permanant employees, employed in my own machine shop, about $75.00.

Q. Is there any other major capital improvement, Mr. Taylor, besides the one you have mentioned?

A. That is the only one registered on the sheet.

Q. By registered on the sheet——

A. I mean that is the only one in which any reference is made to on that sheet, except complete rehabilitation, which I do not term in that respect yet a major capital improvement.

Q. Is there any other major capital improvement?

A. In the premises?

Q. Yes, since March 1, 1942.

A. Not substantially, except such as is contained in complete rehabilitation of numerous apartments.

Q. When was the laundry machine and the facilities installed?

A. The installation was complete and went into service on the 27th of June, 1942.

Q. When did you first consider making the installation?

A. When I purchased the house, I always considered that it was proper to have laundry equipment in an apartment house.

Q. When did you order the material necessary?

A. About two months prior to June 27.

Q. In the same column, Mr. Taylor, for most of the apartments there is a symbol "U", meaning apparently, changed from furnished to unfurnished.

Mr. Brock. Q. That is unfurnished to furnished, isn't it?

A. No, changed from furnished to unfurnished.

Q. From furnished to unfurnished?

A. Yes.

Mr. Dunlap. Q. Does that refer in all cases to the sale of furniture to Mrs. Flynn?

A. Yes, it does, because after the sale of the furniture to Mrs. Flynn I no longer owned the furniture and could not, therefore, rent the apartments furnished.

Q. Does that symbol "U" represent any other changes?

A. No, that simply refers to the change from furnished to unfurnished.

Q. Will you state the circumstances of the sale of your furniture?

A. Yes. I decided that I did not want to rent the apartments furnished, and I was going to offer the furniture for sale, and in mentioning that to Mrs. Flynn she suggested that if she had the money she would purchase

it. I had previously intended first offering it to the tenants, and if the tenants didn't want to buy it, put it on the open market and get rid of it. But since Mrs. Flynn stated that she would like to go into the business and would rent the furniture to the tenants, I agreed to sell it to her instead.

At the same hearing, the petitioner testified as follows (line 23, page 29 to line 5, page 30 of the same Exhibit):

Mr. Dunlap. Q. Mr. Taylor, the symbol "I", which you stated to mean increased services, price in the column for each apartment——

A. Yes.

Q. Will you state what those increased services represented?

A. In general, the increased services represent the use of the laundry machine and equipment in distinction to its installation, and the use of the sewing machine and other facilities and services now provided, which were not provided previously, or previous to that time.